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12 TANJA DUDEK-BOTTEN, ANNABELLE BOTTON,
13 AND J.B.
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15

16 **UNITED STATES DISTRICT COURT FOR THE**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 JONATHAN WAYNE BOTTON, SR.;
19 TANJA DUDEK-BOTTEN;
20 ANNABELLE BOTTON; and J.B., a
21 minor, by and through his guardian
22 JONATHAN WAYNE BOTTON, SR.,

23 Plaintiffs,

24 vs.

25 STATE OF CALIFORNIA; COUNTY
26 OF SAN BERNARDINO; ISAIAH
27 KEE; MICHAEL BLACKWOOD;
28 BERNARDO RUBALCAVA; ROBERT
VACCARI; JAKE ADAMS; and DOES
1-10, inclusive,

Defendants.

Case No. 5:23-cv-00257-KK-SHK

Honorable Kenly Kiya Kato

**DECLARATION OF ROGER A.
CLARK**

1 I, Roger A. Clark, hereby declare as follows:

2 1. I am an expert specializing in the procedures of police practices and
3 proper police tactics, including proper procedures for the detention and arrest of
4 individuals and the type and degree of force, if any, appropriate under different
5 circumstances.

6 2. I am a competent adult and personally familiar with the facts contained
7 herein and would and could competently testify thereto if called upon to do so.

8 3. My opinions are based in part on my training, professional experience,
9 and education. I am a twenty-seven year veteran of the Los Angeles County
10 Sheriff's Department. I was hired on December 1, 1965, and I retired from active
11 service on March 31, 1993. My career included six years at the rank of Deputy
12 Sheriff, six years as a Sergeant, and fifteen years as a Lieutenant. I hold a California
13 Peace Officer Standards and Training ("P.O.S.T.") Advanced Certificate, and I am a
14 graduate of the P.O.S.T. Command College (class #5).

15 4. As a Sergeant and as a Lieutenant, I served on the training staff of the
16 Los Angeles County Sheriff's Department's Patrol School which taught the P.O.S.T.
17 accepted investigation and apprehension methods.

18 5. During my assignment as the Administrative Lieutenant of the
19 Department's Reserve Forces Bureau, I supervised the training of cadets at our
20 Reserve Training Academy. They were taught proper investigation, interview,
21 and apprehension procedures. I also lectured the Reserve Academy on the
22 P.O.S.T. syllabus: "The Legal and Moral Use of Force and Firearms."

23 6. During the last five and one-half years of my career, I commanded a
24 specialized unit known as the North Regional Surveillance and Apprehension Team
25 (N.O.R.S.A.T.), which was created to investigate, locate, observe and arrest major
26 career) criminals. I held this position until my retirement from the Department on
27 March 31, 1993. The majority of our cases were homicide cases. Arrests frequently
28 occurred in dynamic circumstances including crimes in progress.

1 7. As a Watch Commander and as a Lieutenant, I responded to,
2 investigated, and reported on the use of force and officer-involved shootings.

3 8. Since my retirement, I have testified as an expert on jail procedures
4 and jail administration, police procedures, police tactics, investigative procedures,
5 shooting scene reconstruction, trajectory, use of force issues, and bullet casings in
6 Arizona State Courts, California Courts, Washington State Courts and Federal
7 Courts in California, Texas, Colorado, Illinois, Indiana, Pennsylvania, and
8 Washington.

9 9. Prior to forming my opinions regarding the February 17, 2021 officer-
10 involved shooting of Hector Puga, Jonathan Wayne Botten, Sr., Tanja-Dudek
11 Botten, and J.B., I reviewed the police reports, photographs of the scene, CHP
12 dashcam videos, bystander cellphone videos, deposition transcripts, and other
13 related materials.

14 10. At the time of this incident on February 17, 2021, P.O.S.T., basic
15 police officer training on deadly force, and California law surrounding deadly force
16 included the following:

17 a. A peace officer is justified in using deadly force upon another person
18 only when the officer reasonably believes, based on the totality of the
19 circumstances, that such force is necessary to defend against an
20 imminent threat of death or serious bodily injury to the officer or to
21 another person. (Penal Code Section 835a(c)(1)(A); LD 20: Chapter
22 4—Deadly Force, page 4).

23 b. A threat of death or serious injury is imminent when, based upon the
24 totality of the circumstances, a reasonable officer in the same situation
25 would believe that a person has the present ability, opportunity, and
26 apparent intent to immediately cause death or serious bodily injury to
27 the peace officer or another person. An imminent harm is not merely a
28 fear of future harm, no matter how great the fear and no matter how

1 great the likelihood of the harm, but is one that, from appearances, must
2 be instantly confronted and addressed. (Penal Code Section
3 835a(e)(2)).

4 c. Totality of the Circumstances means all facts known to the peace
5 officer at the time, including the conduct of the officer and the subject
6 leading up to the use of deadly force. (Penal Code Section 835a(e)(3)).

7 d. According to Penal Code Section 835a, fear alone does not justify the
8 use of deadly force. An imminent harm is not merely a fear of future
9 harm, no matter how great the fear and no matter how great the
10 likelihood of the harm, but is one that from appearances, must be
11 instantly confronted and addressed.

12 e. As taught in P.O.S.T., courts have held the following: A simple
13 statement of fear for the officer's safety is not enough; there must be
14 objective factors to justify the officer's concern. The use of deadly
15 force must be objectively reasonable. The use of deadly force must be
16 based on the facts and circumstances known to the officer at the time.
17 (LD 20: Chapter 4—Use of Deadly Force, pages 7-8).

18 f. "Unreasonable fear" includes overreactions, and an overreaction in
19 using deadly force can be a use of excessive force. LD 20: Chapter 4—
20 Use of Deadly Force, page 7).

21 g. The officer must give some warning prior to the use of deadly force,
22 where feasible. (LD 20: Chapter 4—Use of Deadly Force, page 5).

23 h. Another factor that may determine reasonableness in a use of force
24 incident includes the availability of other objectively reasonable force
25 options. (LD 20: Chapter 4—Use of Deadly Force, page 5).

26 i. An officer must justify every shot he or she fires.

27 11. After reviewing the relevant materials in this case, and based on my
28 training background and experience, it is my opinion that the tactics used by CHP

1 Sergeant Isaiah Kee, CHP Officer Bernardo Rubalcava, CHP Officer Michael
2 Blackwood, SBSD Deputy Jake Adams, and SBSD Sergeant Robert Vaccari
3 violated standard police practices and training, which contributed to or was a cause
4 of the shooting of Hector Puga, Jonathan Wayne Botten, Sr., Tanja Dudek-Botten,
5 and J.B.

6 12. Officers are trained that they are responsible for their tactical decisions
7 when they resort to the use of lethal force. It is my opinion that the officers' failure
8 to follow standard police practices and training in dealing with barricaded subjects,
9 poor tactics, and rushing to take Mr. Puga into custody once he was outside of the
10 vehicle all contributed to the officers' unnecessary use of lethal force.

11 a. The officers failed to formulate a safe tactical plan, made poor tactical
12 decisions, and limited their tactical options, ultimately leading to their
13 unnecessary use of lethal force. The officers failed to communicate
14 with each other to formulate a plan on extracting Mr. Puga from the
15 Expedition and what to do when Mr. Puga exited the Expedition. The
16 officers failed to communicate with each other and advise each other of
17 their plan to apprehend Mr. Puga prior to approaching Mr. Puga at the
18 front of the vehicle.

19 b. POST Learning Domain 23, "Crimes in Progress," advises officers that
20 if available, officers should request specialized units and resources as
21 soon as it has been determined that the suspect has taken a barricaded
22 position. SWAT specifically trains to respond to incidents where
23 subject(s) may be armed, barricaded, and refusing to submit to arrest.
24 The utilization of San Bernardino Sheriff's Department SWAT would
25 have been a safer alternative. SWAT is equipped with special training,
26 equipment, and tools, which can help resolve the situation of a
27 barricaded subject without escalating the situation.

1 c. Given that the officers believed that Mr. Puga was involved in a prior
2 freeway shooting, was still armed, was refusing to exit his vehicle, and
3 was situated in a residential neighborhood, Sergeant Vaccari's failure
4 to request for SWAT to respond when initially requested by Sergeant
5 Kee and after initial less-lethal force was unsuccessful were poor
6 tactical decisions that contributed to the officers' use of unnecessary
7 lethal force.

8 d. Among the “Fatal Errors” listed by POST Learning Domain 23,
9 “Crimes in Progress,” is poor positioning due to rushing or poor tactics.
10 The officers’ decision to leave cover and enter an open-air environment
11 to take Mr. Puga into custody, when the officers stated that they still
12 believed Mr. Puga to be armed and dangerous, and Sergeant Kee stated
13 that he was in fear for his life at the time he made the decision to
14 approach and take Mr. Puga into custody, was a tactically poor
15 decision. The situation did not call for an urgent response at the time
16 the officers approached Mr. Puga.

17 13. Officers are trained that deadly force is only justified when there is an
18 objectively reasonable belief that the suspect poses an immediate threat of death or
19 serious bodily injury, and that subjective fear is insufficient to use deadly force.

14. Officers are also trained that an overreaction is excessive force.

21 15. It is my opinion that under the facts and circumstances known to
22 Sergeant Kee at the time he initially shot Mr. Puga that Sergeant Kee violated
23 standard police practices and training when he shot at Mr. Puga when he saw Mr.
24 Puga drop his right hand from a raised position. It is my opinion that Sergeant Kee
25 overreacted when he saw Mr. Puga drop his right hand from a raised position. The
26 percipient witness' cell phone video, labeled COSB0001459, shows Mr. Puga's
27 frontside as he exits the car and there appears to be no weapon on or near Mr.
28 Puga's waistband. Witness Betzabeth Gonzalez testified that when Mr. Puga stepped

1 out of the vehicle, she was able to see his whole body and saw that he did not have a
2 gun in his hands or in his waistband. Several witnesscs testified that throughout the
3 time Mr. Puga was outside of the Expedition, they observed Mr. Puga drop his
4 hands from raised position several times. Deputy Adams observed Mr. Puga drop
5 his hands several times towards his waist and thought Mr. Puga was pulling his
6 pants or adjusting his waistband or reaching into his pockets. In a percipient
7 witness's cell phone video of the incident, Mr. Puga can be seen dropping his right
8 hand to his waist at least twice before the officers approached. Additionally, it is
9 undisputed that Mr. Puga never verbally threatened any of the officers or anyone
10 else. Under these circumstances, the initial shooting by Sergeant Kee when Mr.
11 Puga dropped his right hand from a raised position was inappropriate because Mr.
12 Puga did not have the gun in his hand, and a gun was neither coming in the direction
13 of Sergeant Kee or anyone nor was a gun pointed at Sergeant Kee or anyone.

14 16. Officer Rubalcava, Officer Blackwood, Sergeant Kee, and Deputy
15 Adams violated standard police practices and training when they shot at Mr. Puga
16 while he was running away. Mr. Puga did not present an immediate threat of death
17 or serious bodily injury as he was running and the officers failed to reassess and
18 overreacted when they fired subsequent volleys when Mr. Puga was running.

19 a. Officers are trained that deadly force may only be used in an immediate
20 defense of life situation. Under the facts of this case, there was no
21 immediate defense of life situation while Mr. Puga was running away.
22 There were no bullet impacts or casings found near the area of the
23 initial shooting that would support the allegation that Mr. Puga fired a
24 weapon at anyone. Several different video sources captured Mr. Puga
25 running from the Expedition until he ultimately fell to the ground. The
26 videos show Mr. Puga running straight ahead, with both arms pumping
27 back and forth in a running motion; never turning around towards the
28 officers and never pointing either hand back toward the officers.

1 b. When Officer Rubalcava was initially asked what Mr. Puga doing with
2 the gun as he was running that caused Officer Rubalcava to shoot,
3 Officer Rubalcava answered, "Nothing."
4 c. Officers are trained that they may use deadly force against a fleeing
5 suspected felon to prevent escape only if the officer has probable cause
6 to believe that the suspect poses a significant threat of death or serious
7 physical injury to the officers or others. The physical evidence found at
8 the scene supports the conclusion that Mr. Puga never fired a gun at
9 anyone. Percipient witnesses testified that they never saw Mr. Puga
10 aggressively reach for anything, point a gun, or was holding a gun in
11 either hand while he was running. It is undisputed that Mr. Puga never
12 verbally threatened anyone. Additionally, Mr. Puga was running in the
13 middle of the street and not close to any residence nor about to enter
14 any residence when the officers shot him.

15 d. There is evidence that this was likely a situation of contagious fire.

16 17. Officers are trained that a warning that deadly force is going to be used
17 should be given when feasible. It is my opinion that the officers had time to provide
18 Mr. Puga with a warning that deadly force was going to be used prior to the
19 shooting. Additionally, the officers also had time to provide an additional warning
20 that deadly force was going to be used in between their first and subsequent volleys
21 of shots.

18. It is my opinion that a reasonably trained officer facing the same facts
and circumstances as the involved shooting officers would understand that the
officers' intentional shooting in the direction of the Bottens' residence would cause
a reasonable person in the Botten's position to believe that they were not free to
leave their property while the officers were apprehending Mr. Puga in front of the
Botten home and that the officers intended to restrain their freedom of movement
while attempting to apprehend Mr. Puga.

- 1 a. Officers are trained that a detention is an assertion of authority by a
2 peace officer that would cause a reasonable person to believe they are
3 not free to leave. Such a belief may result from physical restraint,
4 unequivocal verbal commands, or other conduct by an officer.
- 5 b. A reasonable officer facing the facts and circumstances confronting the
6 involved officers knew or should have known that there were innocent
7 bystanders inside the residential homes surrounding the incident
8 location in the middle of the night.
- 9 c. A reasonably trained officer facing the same facts and circumstances as
10 the involved officers would understand that the officers' ongoing
11 flashing lights, commands, and deployments of force, would cause a
12 reasonable person residing in the nearby residences to believe that they
13 were not free to leave their residence.

14 19. Officer Rubalcava and Sergeant Kee violated standard police practices
15 and training when they failed to consider their background prior to utilizing deadly
16 force, resulting in the serious injuries of innocent bystanders Jonathan Wayne
17 Botten, Sr., Tanja Dudek-Botten, and J.B. Police officers are trained to consider
18 their background prior to utilizing deadly force. The Los Angeles Police Department
19 utilizes an acronym for required considerations before using a firearm: B.A.L.K.S.:
20 Background (who and what is behind your target), Age of suspect (adult vs.
21 juvenile, elderly, etc.), Last resort (all other options have been depleted or would not
22 be practical, Knowledge of the crime (how certain you are about the crime and the
23 suspect's connection to the crime), and Seriousness of the crime (felony vs.
24 misdemeanor). Here, the officers knew or should have known that they were
25 stopped in a residential neighborhood with houses on four corners of the
26 intersection. They failed to consider their background prior to and when they fired
27 several volleys of shots at Mr. Puga. This tactical failure resulted in the serious
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1 injuries of Jonathan Wayne Botten, Sr., Tanja Dudek-Botten, and J.B., who were
2 inside their home at the time of the shooting.

3 20. The officers violated standard police practices and training in failing to
4 request backup to set up a perimeter and evacuate uninvolved individuals from the
5 area in order to ensure the safety of these uninvolved individuals. It is my opinion
6 that the officers' failure to follow standard practices and training in responding to
7 high-risk situations involving barricaded suspects by requesting backup, setting up a
8 perimeter, and evacuating all uninvolved individuals from the area contributed to the
9 injuries suffered by the Botten family.

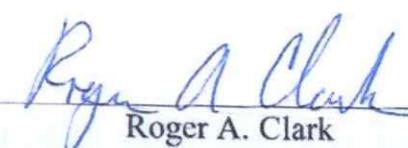
10 a. POST Learning Domain 23 advises officers that the safety of
11 uninvolved individuals must be the principal concern to officers who
12 respond to high-risk situations involving barricaded suspects. Thus,
13 POST Learning Domain 23 advises officers to systematically evacuate
14 all uninvolved individuals from the area, relocate them to a safe
15 location, determine the identification of each, and debrief those
16 individuals who could provide additional information relevant to the
17 situation.

18 b. Despite the officers were dealing with Mr. Puga for over an hour in the
19 residential neighborhood, they failed to take steps to ensure the safety
20 of the residents of that neighborhood. The officers failed to request
21 additional backup to set up a perimeter and systematically evacuate the
22 residents in the surrounding houses despite dealing with a potentially
23 armed, barricaded subject who they believed to have been involved in
24 an earlier freeway shooting.

25 c. A reasonably trained officer facing the same circumstances would have
26 requested backup and additional resources in order to deal with a
27 potentially armed, barricaded subject in order to ensure the safety of all
28 uninvolved individuals in the area.

1 I declare under penalty of perjury under the laws of the State of California and the
2 United States of America that the foregoing is true and correct.
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4 Executed this 26th day of February 26, 2025, in Santee, California.
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Roger A. Clark

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